

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JULIO CESAR NAVAS,

Plaintiff,

Case No. 3:18-cv-00019-MMD-WGC

ORDER

V.

JEROM POLAHA, *et al.*,

Defendants.

Plaintiff, who is incarcerated at Lovelock Correctional Center (LCC), filed his complaint on January 12, 2018. (ECF Nos. 1, 2.) The complaint was not accompanied by an application to proceed in forma pauperis (IFP) or the filing fee. On February 5, 2018, Plaintiff filed an application to proceed IFP. (ECF No. 3.)

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

“[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some particularity, definiteness and certainty.”” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). A litigant need not “be

1 absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
2 335 U.S. 331, 339 (1948).

3 When a prisoner seeks to proceed without prepaying the filing fee:

4 [I]n addition to filing the affidavit filed [as described above], [the prisoner] shall
5 submit a certified copy of the trust fund account statement (or institutional
6 equivalent) for the prisoner for the 6-month period immediately preceding the filing
7 of the complaint or notice of appeal, obtained from the appropriate official of each
8 prison at which the prisoner is or was confined.

9 28 U.S.C. § 1915(a)(2). Notwithstanding the foregoing:

10 (1) ... [I]f a prisoner brings a civil action...[IFP], the prisoner shall be required to
11 pay the full amount of a filing fee. The court shall assess and, when funds exist,
12 collect, as a partial payment of any court fees required by law, an initial partial
13 filing fee of 20 percent of the greater of --

14 (A) the average monthly deposits to the prisoner’s account; or

15 (B) the average monthly balance in the prisoner’s account for the 6-month period
16 immediately preceding the filing of the complaint or notice of appeal.

17 (2) After payment of the initial partial filing fee, the prisoner shall be required to
18 make monthly payments of 20 percent of the preceding month’s income credited to
19 the prisoner’s account. The agency having custody of the prisoner shall forward
20 payments from the prisoner’s account to the clerk of the court each time the amount
21 in the account exceeds \$10 until the filing fees are paid.

22 28 U.S.C. § 1915(b)(1), (2).

23 Plaintiff has filed an application to proceed IFP, but does not include a certified copy of
24 his trust fund account statement or the institutional equivalent for the preceding six-month period.

25 The Clerk shall SEND Plaintiff a copy of the instructions and application to proceed IFP
26 for an inmate. Plaintiff has **THIRTY DAYS** from the date of this Order to either file his completed
27 IFP application or pay the filing fee. To reiterate, the application must be accompanied by a
28 certified copy of his trust fund account statement, and the financial certificate signed by a person
 authorized on behalf of NDOC.

29 If Plaintiff elects to pay the filing fee, the total amount is \$400, which consists of the \$350
30 filing fee and a \$50 administrative fee. If he files a completed IFP application, he is still responsible
31 for paying the \$350 filing fee over time, even if his action is dismissed. If Plaintiff does not pay
32 the filing fee or file a completed IFP application within thirty days, dismissal will be
33 recommended.

34 In the event Plaintiff files a completed IFP application or pays the filing fee, the court will

1 screen the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), or 28 U.S.C. § 1915A, or both.
2 28 U.S.C. § 1915(e)(2)(B) applies to a plaintiff proceeding IFP, and 28 U.S.C. § 1915A applies to
3 complaints filed by prisoners who seek redress from a governmental entity or officer or employee
4 of a governmental entity. Both require dismissal of a complaint, or any portion thereof, that is
5 frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary
6 relief against a defendant immune from such relief. Again, if the complaint is dismissed on
7 screening, Plaintiff will not be refunded the \$400 filing fee if it was paid, or if he is granted IFP
8 status, he will still be responsible for paying the \$350 filing fee over time.

9 **IT IS SO ORDERED.**

10 DATED: March 13, 2018.

11 *William G. Cobb*
12 WILLIAM G. COBB
13 UNITED STATES MAGISTRATE JUDGE

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